

Tuesday 5 February 2002

## ANNEX III

**Letter from Mr Bolkestein, Member of the Commission, to Mrs Randzio-Plath,  
Chair of the Committee on Economic and Monetary Affairs (EMAC), dated 2 October 2001**

Dear Mrs Randzio-Plath,

Further to our recent meetings, and in response to your letter of 12 July 2001 and your comments of 19 September 2001, I enclose below my suggestions on how to improve cooperation with the European Parliament in the field of securities policy, in the light of the Lamfalussy report.

1. In future EMAC will be informed in advance of all specific legislative initiatives in the securities field. As much information as possible will be posted on the Internet for consultation on all future legislative initiatives in the securities domain so that a broad range of market participants, users or consumer groups from different Member States can put forward their views on pending proposals. My services will publish and comment on the results of these consultations.

2. Before the adoption of such legislative proposals, my services will prepare a note specifying and explaining the distinction between the essential elements and the technical provisions in our draft proposals. Except in duly justified urgent cases, your Committee will have 15 working days to make known its reactions.

3. For information purposes, EMAC will be sent draft legislative proposals which are at an advanced stage at the same time as they are sent to industry and/or Member States experts.

4. The agenda and the documents sent to the European Securities Committee (ESC), including the draft implementing measures, will be sent to EMAC at the same time as to the members of the Securities Committee. In addition the summary records of the meetings will be prepared by my services in a way that will ensure that the European Parliament will be aware of the key issues in the Securities Committee's proceedings. When the Securities Committee, acting in its advisory capacity, gives a final opinion to the Commission, this will also be made available to EMAC and published on our website.

5. Following a written request from the chairperson of the EMAC, confidential documents prepared in the course of a legislative procedure will be sent to EMAC in accordance with the Interinstitutional Agreement, subject to appropriate arrangements being made to protect their confidentiality.

I note the Parliament's strongly held view that the documents sent to the Securities Committee and the minutes should be made available to the public on the Internet. The issue of making available to the public on the Internet documents sent to the ESC is being examined attentively.

Requests by the Chairperson for access to the full minutes of the Securities Committee will be treated in conformity with the inter-institutional arrangements in operation.

6. The mandates that we give to the European Securities Regulators' Committee (CESR) will be made public. The Regulators Committee's formal opinion will be forwarded to EMAC and published on the Internet. As to access to the internal documents of the Regulators Committee, the Commission has already invited this Committee to be as open and transparent as possible. The chairman of CESR will be contacting you soon to explain further how the new Regulators Committee will act. Furthermore the CESR has launched an open consultation on its future consultation practices. The Commission proposed in the explanatory memorandum of its Decision establishing the Regulators Committee that it feels it should be advised by a broadly based market participants group representative of different groups and nationalities. I note that the European Parliament strongly emphasizes that a standing market participants group should be established by the Regulators Committee as soon as possible, which includes both consumer and investor representatives.

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7. To improve transparency and the regular flow of information between the Commission's services (DG MARKT) and EMAC in the field of securities policy more regular meetings should take place at three levels:

- (i) A monthly meeting between representatives of EMAC's Secretariat and Commission services (DG MARKT) to exchange all relevant information in the field of securities markets regulation and to facilitate forward planning.
- (ii) The Commissioner and/or appropriate senior Commission officials should meet the coordinators and rapporteurs of the EMAC Committee members regularly and informally (every two or three months), to keep the Parliament fully informed. This will include information on the mandates we are intending to issue to the Regulators Committee, the draft implementing measures it anticipates adopting and a regular progress report on the Financial Services Action Plan. An early warning mechanism could also be developed to help avoid unnecessary conflicts on specific implementing measures.
- (iii) The '2005 Group' should be held regularly (say every three months) and perhaps scheduled one year in advance. It should focus on strategic questions perhaps signalling potential or actual difficulties that might emerge in the securities policy area. The Group could provide an opportunity for discussing what actions might be needed to break any potential deadlock.

8. On technical implementing measures, the European Parliament will have one month from the date of receipt of the final draft of the implementing measures to react. If within that period a resolution is passed by the Parliament because the draft implementing measures are deemed to exceed the implementing powers provided in the basic instrument, the Commission will re-examine the draft measures. The Commissioner responsible for securities matters, the Presidency of the Council and the Chairperson of EMAC could also be invited to meet informally at the request of one of them at short notice (normally within 10-15 working days) in order to seek to identify appropriate solutions. I will also be willing to meet the Chairperson of EMAC should any difficulties arise in the transparency and consultation processes.

9. The Commission will fully respect the role of the European Parliament as co-legislator with the Council in the field of financial services and capital markets.

- In this context, I have noted in your comments of 19 September your view that: *'In the light of the Stockholm European Council resolution of 23 March 2001, the Commission should commit itself, in order to find a balanced solution for those cases of implementing measures in the field of securities markets acknowledged in the light of discussions to be particularly sensitive, to avoid going against predominant views which might emerge either within the Council and/or the Parliament, as to the appropriateness of such measures and that this commitment shall not constitute a precedent'*.
- In the same context, you will recall that in the Stockholm European Council Resolution, the Commission has agreed that it will take the utmost account of the European Parliament's position. In all such cases, we will endeavour to find a balanced solution fulfilling the common interest. Indeed it is only by working together harmoniously that long-term success will be possible. If, however, having exhausted all the channels, a solution cannot be found, we will explain publicly and in writing our reasons for adopting the measure.

10. In future Commission proposals in the securities field a date could be included for reviewing the application of each Directive or Regulation. I note the European Parliament's intention to include a review clause in existing proposals and to limit the duration of the delegation of technical implementing powers in the securities field subject to renewal on the basis of a further proposal by the Commission. I note the European Parliament's intention that this limit would normally be 4 years after the entry into force of the legislation.

11. There will be a full review of the 'Lamfalussy approach' in 2004, the year when the next Inter-governmental Conference will take place.

The Commission considers that a clarification of the distinction between primary and secondary legislation in the Treaty should be examined further. As the Commission's recent White Paper on governance (July 2001) clearly states: *'This adjustment of the responsibility of the Institutions, giving control of executive*

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*competence to the two legislative bodies and reconsidering the existing regulatory and management committees, touches the delicate question of the balance of power between the Institutions. It should lead to modifying Treaty Article 202 which permits the Council alone to impose certain requirements on the way the Commission exercises its executive role. That article has become outdated given the co-decision procedure which puts Council and the European Parliament on an equal footing with regard to the adoption of legislation in many areas. Consequently the Council and the European Parliament should have an equal role in supervising the way in which the Commission exercises its executive role. The Commission intends to launch a reflection on this topic in view of the next Intergovernmental Conference'.*

12. Finally, I look forward to working with the Council and the European Parliament to set up as soon as possible the Interinstitutional Monitoring Committee proposed in the Lamfalussy report.

I trust we now agree that these proposals form the basis of an understanding on how, together, we intend to implement the Lamfalussy proposals and the Financial Services Action Plan on time.

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